

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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DAVID VANN,

Plaintiff,

v.

CITY OF ROCHESTER, et al.,

Defendants.

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**AFFIDAVIT**

Case No.: 18-cv-6464

STATE OF NEW YORK)  
COUNTY OF MONROE) SS:  
CITY OF ROCHESTER)

STEVEN MITCHELL, being duly sworn, deposes and, under penalty of perjury, says as follows:

1. I am currently an officer on light duty with the Rochester Police Department, in 2015 I was was a road patrol officer employed by the Rochester Police Department.

2. I submit this affidavit in support of Defendants' Response to Plaintiff's Motion for Summary Judgment.

3. On September 4, 2015, I was patrolling, as part of my job duties, and there was an emergency call for customer trouble at A& Z mini mart at 439 South Avenue.

4. When I arrived at the scene, Officer Drake was speaking to the Plaintiff inside the store. I spoke to the store clerk outside of the store for some time. It was our standard procedure to separate the parties when initially trying to get information as to what occurred.

5. .while I was speaking to the store clerk Officer Kester arrived and I spoke

to him about what I had learned from speaking to the store clerk.

6. I then went inside the store to speak to the Plaintiff. My main goal was to get the Plaintiff to leave the store and he did not want to leave the store, as he said, it was free county and he did not have to leave.

7. Myself and the other officers attempted to get the Plaintiff to leave the store. During the course of our interaction with the Plaintiff, about two to five minutes, he eventually left the store.

8. The Plaintiff left the store and started to walk away and then he turned back around remained and said something out loud and he had his fists brawled when he turned towards us.

9. I determined, with Officer Kester, to place the Plaintiff under arrest and we walked towards the Plaintiff at the same time.

10. As we were attempting to put handcuffs on Plaintiff, one cuff was placed on and the other was not; Plaintiff moved his right arm away from behind his back and the right cuff was not properly placed on him due to him pulling his arm from behind him.

11. While attempting to handcuff him, I felt Plaintiff's momentum go towards the ground and attempted to maintain control of him as he, Kester and I went to the ground.

12. Officer Kester immediately screamed in pain and I had no idea what was going on. Plaintiff's right arm was still not properly cuffed and I attempted to lock that cuff on and maintain control of the Plaintiff.

13. When we were on the ground, Mr. Vann was still not searched and he was reaching for his waistband. I used a distracting blow to his shoulder blade area to get control of him

14. Officer Kester was writhing and yelling in obvious pain and I brought Plaintiff to his feet to walk him to my car to attempt to search him

15. When we got to my car Plaintiff bumped back from the car using his chest to move his body weight back towards me and then to the left. As he moved away from me and attempted to use a hooking technique but I could not gain control of the Plaintiff.

16. Unable to gain control and Plaintiff using all of his momentum to move away from me, I attempted a distractionary jab, which was not effective.

17. Officer Drake had come to help because I was struggling to gain control of Plaintiff, we moved to take him to the ground to secure and search him and we hit the ground and I heard Officer Drake yell in pain,

18. We had no control over the Plaintiff and for the safety of ourselves and Plaintiff, we are taught and from my experience is to bring the individual to the ground to search and properly handcuff the suspect. He continued to reach for his waistband causing apprehension that he had a weapon.

19. I am now one on one with Plaintiff and I attempted to use OC spray and another jab on Plaintiff; I was reaching a point of exhaustion as the struggle had been going for a few minutes, longer then I have ever been involved in.

20. The pepper spray was not coming out of the canister properly and was not effective. Other officers arrived as held the Plaintiff down with my arm and body.

21. After the other officers arrived, Plaintiff was searched on the ground and at my police car with negative results and he was eventually transported to the Monroe County Jail.

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**STEVEN MITCHELL**

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 2024

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Notary Public